IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No.2143 of 2006
To
FIRST APPEAL No.2159 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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SPL.LAQ OFFICER - Appellant
Versus
DALVADI AMRUTLBHAI VAJABHAI & ORS. - Respondents

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Appearance :
MS KRINA P CALLA, AGP for Appellant.
MR MD VAKIL for Original Claimants.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 04/05/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

What is challenged in these appeals filed under Section 54 of the Land Acquisition Act, 1894 (“the Act” for

short) read with Section 96 of the Code of Civil Procedure, 1908, is the legality of common judgment and award dated June 14, 2005 rendered by the learned District Judge, Surendranagar, in Land Reference Case Nos.113 of 1995 to 129 of 1995 by which the claimants have been awarded additional amount of compensation at the rate of Rs.8.74 paise per square metre for their acquired lands over and above the compensation awarded to them by the Special Land Acquisition Officer at the rate of Rs.1.56 Paise per square metre for irrigated lands and Rs.1.04 Paise per square metre for non-irrigated lands by his award dated April 16, 1994.

2. The Executive Engineer, Saurashtra Branch, Canal Section-2/5, Limbdi, proposed to the State Government to acquire the lands of Village: Kotharia, Taluka: Wadhwan, District: Surendranagar, for the public purpose of construction of canal under Narmada Project. On perusal of the said proposal, the State Government was satisfied that the lands of Village: Kotharia mentioned therein, were likely to be needed for the said public

purpose. Therefore, a notification under Section 4 of the Act was issued, which was published in the official gazette on August 20, 1992. Thereafter, necessary inquiry was made under Section 5A of the Act and a report was submitted by the Special Land Acquisition Officer to the State Government as contemplated by Section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that the lands of Village: Kotharia mentioned in the notification published under Section 4(1) of the Act were needed for the public purpose of construction of canal under Narmada Project. Therefore, a declaration under Section 6 of the Act was issued, which was published in the official gazette on February 15, 1993. Thereafter, interested persons were served with the notices for determination of compensation payable to them. Having regard to the materials placed before him, the Special Land Acquisition Officer, by his award dated April 16, 1994, offered compensation to the claimants at the rate of Rs.1.56 paise per square metre for irrigated lands and Rs.1.04 paise per square metre for non-irrigated lands. The claimants were of the opinion that the offer of

compensation was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the District Court for the purpose of determination of just amount of compensation payable to them. Accordingly, the References were made to the District Court, Surendranagar, where they were numbered as Land Reference Case Nos.113 of 1995 to 129 of 1995.

3. On behalf of the claimants, witness Amrutlal Vajabhai Dalvadi was examined at Exhibit 55 whereas on behalf of the Acquiring Authorities, witness Dayarambhai Narayanbhai, who was then Deputy Executive Engineer, was examined at Exhibit 67. The claimants had produced sale deeds at Exhibits 71 and 72 in support of their claim for enhanced compensation whereas the Acquiring Authorities had produced previous award of the Reference Court dated December 27, 2001 rendered in Land Reference Case Nos.224 of 1996 to 247 of 1996 in support of their case that the claimants were not entitled to enhanced compensation. The award impugned in the appeals does not

indicate that the sale deeds produced by the claimants were considered by the Reference Court while determining the market value of the lands acquired in the instant cases. Further, the award dated December 27, 2001 rendered in Land Reference Case Nos.224 to 247 of 1996 was subjected to challenge at the instance of Acquiring Authorities in First Appeal Nos.1468 of 2003 to 1491 of 2003. For the reasons mentioned in the judgment delivered on May 3, 2007 in First Appeal Nos.1468 to 1491 of 2003, the matters have been remitted to the Reference Court for fresh decision in accordance with law. Moreover, this Court is of the opinion that the Reference Court was not justified in relying upon the previous award of the Reference Court rendered in Land Reference Case Nos.224 to 247 of 1990 because in those cases, the compensation was determined on yield basis whereas no evidence in the instant cases regarding yield was led by the claimants at all. Moreover, reliance placed by the Reference Court in the instant cases on the previous award of the Reference Court rendered in Land Reference Case No.224 to 247 of 1996 was not justified because in the previous cases, notification under

Section 4(1) of the Act was published in the official gazette on October 25, 1993 whereas in the instant cases, it was published on August 20, 1992. Thus, the common award challenged in the appeals is also vitiated because of consideration of post notification award. On the facts and in the circumstances of the case, this Court is of the opinion that the conclusions reached by the Reference Court are not warranted and justifiable on the evidence placed before it. This Court finds that the conclusions reached by the Reference Court are unsustainable on settled principles of law. It is well settled that the Reference Court has to determine the market value of the lands acquired on legal, valid, reliable and acceptable relevant evidence and should not base its conclusions on feats of imagination. Having regard to the facts of the case, the learned counsels for the parties have agreed that the impugned award be set aside and the cases be remitted back to the Reference Court for a fresh decision in accordance with law.

4. Accordingly, the appeals are allowed. The

common award impugned in the appeals is set aside. The matters are remitted back to the Reference Court for a fresh decision in accordance with law. As the notification under Section 4(1) of the Act was published in the official gazette on August 20, 1992, the Reference Court is directed to dispose of the references on merits as early as possible and preferably within the period of three months from the date of receipt of copy of this order. The Registry is directed to transmit the R & P of the cases to the Reference Court forthwith. The appeals are allowed to the extent indicated hereinabove. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment as early as possible.

(J. M. Panchal, J.)

(Smt. Abhilasha Kumari, J.)

Rajendra